

CONFIDENTIAL

WEEKLY HOT ISSUES REPORT FOR RA/DRA

WEEK ENDING MARCH 14, 2014

OFFICE OF ECOSYSTEMS PROTECTION AND REMEDIATION

This Week –

***MONTHLY REPORT TO CONGRESS ON CLEAN WATER ACT SEC. 404 PERMITS**

UNDER REVIEW: The FY14 appropriation for EPA's Wetlands Program carries a requirement that EPA "...will use the funds provided to accelerate the review and comment period for consultations provided as part of the Section 404 permitting process." The Committees directed EPA, in consultation with the Corps of Engineers, to report monthly on the number of Section 404 permits under EPA's review. The content of the report is supposed to include the information requested under the House Report 112-589, which references information on mountaintop mining permits. **The first report is due to Congress on/about March 18, which is not possible** (as characterized by OWOW). The Regions have received a draft of the report template from OWOW. The report will demonstrate that we meet all the deadlines required for permit review. The Regions' responsibilities are to keep the permit review database up to date. Region 8 will be able to do this. Region 8 requested a discussion at the Wetlands Managers' meeting to discuss consequences to the environment if we continue to demonstrate that we meet deadlines even under severely shrinking numbers of employees. Under this scenario, we will be able to meet review deadlines with fewer employees because we will review fewer and fewer permits despite the impacts described by many proposed projects.

Contact: Karen Hamilton 312-6236

***WYOMING USE ATTAINABILITY ANALYSIS (UAA) – NATIONAL PRECEDENT:**

On January 28, 2014, Wyoming Department of Environmental Quality (WDEQ) public noticed a revised UAA and web map showing proposed recreation use designations, as well as a response to comments for the comment period ending September 30, 2013. A UAA is traditionally done on a site-specific basis using field data. WDEQ has developed a statewide UAA for recreation using GIS data that was validated by 871 field surveys. Region 8 staff have worked with WDEQ and HQ closely for almost five years on this project, and the state has done everything EPA asked them to in order to achieve an approvable product. The second public comment period on the draft UAA closes March 14, 2014, and EPA's draft comment letter is supportive of the state's UAA approach. Region 8 staff think the proposed use changes are approvable. WDEQ will likely submit this version of the UAA to EPA for action after completing a response to comments document. **EPA's action will set a national precedent.**

However, our letter also notes the UAA appears to include waters located on the Wind River Indian Reservation and that the EPA administers the Clean Water Act (CWA) in Indian country as defined at 18 U.S.C. 1151, which includes all lands, regardless of ownership, within the exterior boundaries of the Wind River Indian Reservation. Therefore, EPA's comments on the UAA refer to waters located outside of the Wind River Indian Reservation. *See attachment for details.*

Contact: Tonya Fish, 312-6832

***LIBBY SUPERFUND SITE/MONTANORE MINE:** Due to an anticipated reduction in the number of removal actions to be undertaken in Libby this construction season, the U.S. Army Corps of Engineers (USACE) anticipates contracting with fewer workers this year than last to support the Libby Asbestos Superfund project. The EPA and the USACE met with a number of local contractors in Libby earlier this week to talk about potential work for the 2014 Libby Asbestos removal program. The meeting prompted some workers in the community to inquire about the status of the Montanore Mine and potential jobs. Sentiment among some is that EPA/USACE are impeding the mine's permit and slowing economic growth and creation of new jobs in Lincoln County, Montana. Colonel Cross (USACE) will be in Libby in late May discussing the Montanore Mine and issues surrounding 404 permitting as well as touring the Libby Superfund project. Martin Hestmark may join Colonel Cross in Montana, but that is not yet confirmed.

CONTACT: Mike Cirian, Libby Asbestos Field Team Lead, (406) 293-6194

COLUMBIA FALLS ALUMINUM SMELTER SITE REASSESSMENT: The Superfund Site Assessment Program is completing a site reassessment of the Columbia Falls Aluminum Smelter near Columbia Falls, MT. Environmental sampling conducted as part of the Site Reassessment measured a cyanide concentration in a domestic well of 111 ug/l. This well is located down-gradient of the site and serves 5 households. While this concentration is below the Safe Drinking Water Act MCL of 200 ug/l, it is greater than the tap water drinking water risk screening level of 9.4 ug/l and tap water inhalation risk screening level of 1.4 ug/l. Since the well cyanide concentration was higher than the risk screening levels, this was referred to the emergency response program. Initially, the emergency response program will sample domestic wells in the neighborhood of the well identified with elevated cyanide levels. A response action plan will be developed based on the sampling results. The homeowner and elected officials will be notified of the cyanide measured in residential wells on March 14. The EPA Site Assessment Manager will meet with the public in April to discuss the site reassessment report.

Contacts: Robert Parker, 312-6664 and Paul Peronard, 312-6808

OFFICE OF ENFORCEMENT, COMPLIANCE & ENVIRONMENTAL JUSTICE

Last Week –

***REGION 8 ENTERS INTO AN ADMINISTRATIVE ORDER ON CONSENT WITH UNITED PARK CITY MINES FOR THE PERFORMANCE OF AN ENGINEERING EVALUATION/ COST ANALYSIS (EE/CA) AND REMOVAL ACTION FOR THE LOWER SILVER CREEK IN PARK CITY, UTAH:** On March 6, 2014, Region 8 entered into a settlement agreement with United Park City Mines (UPCM) and multiple federal and state agencies whereby UPCM will assess, cleanup, and restore more than 2,700 acres that are contaminated with historic mining waste within the Richardson Flat Superfund site near Park City, UT. Under the terms of an administrative order on

consent between UPCM and the EPA, the Bureau of Land Management (BLM), the U.S. Fish and Wildlife Service (FWS), the Utah Department of Environmental Quality, the Utah Division of Parks and Recreation, and the State of Utah Natural Resource Trustee, UPCM will perform an engineering evaluation, cost analysis (EE/CA), cleanup and restoration in lower Silver Creek. UPCM is among several parties that contributed to mine waste contamination at the site. The EPA has entered settlements with other responsible parties for recovery of past response costs in other areas of the site. UPCM will fund the activities required under the settlement agreement using its own funds and a portion of the funds the EPA recovered through ASARCO's 2005 bankruptcy.

Contact: Andrea Madigan, 312-6904

***EPA IS ISSUING AN EMERGENCY ADMINISTRATIVE ORDER (EAO) TO MOUNTAIN VILLAGE PARKS, INC., AND DIANE AND DANIEL ALEXANDER, OWNERS AND OPERATORS OF THE MOUNTIAN VILLAGE PARKS PUBLIC WATER SYSTEM LOCATED IN SOUTH WESTERN SUBLETTE COUNTY, WYOMING. THE EAO IS BEING ISSUED TO PROTECT PUBLIC HEALTH FOLLOWING A LOSS OF PRESSURE IN THE DISTRIBUTION SYSTEM:** On March 5, 2014, the EPA was advised by the Wyoming Department of Environmental Quality (WYDEQ) that there had been an interruption of water services to users of this system. EPA was notified that a malfunctioning valve and an inadequately functioning pump on the well caused a pressure loss in part of the distribution system. EPA was advised by the System's backup operator that some users have a "trickle" of water while others have no water available. While the faulty valve was reportedly repaired, the System will need to replace the pump in order to restore service to the affected portion of the distribution system. The EPA is issuing the Emergency Order to provide clear guidance to the owner and operator on actions needed to protect public health. The EAO requires the Respondent to issue a boil water notice; provide alternate water; clean, disinfect and flush the distribution system; and begin daily bacteriological testing once corrective action has been achieved. The EAO also requires the System to prepare a plan and schedule aimed at ensuring that there is no future pressure loss in the system. EPA has notified WYDEQ and the Wyoming Department of Health about the situation. The Drinking Water Enforcement Program will work with the System and the Drinking Water Program to ensure the protection of public health. *Information only, no action requested from RA.*

Contacts: Kimberly Pardue Welch (Technical), 312-6983, Amy Swanson (Legal), 312-6906

***DEPARTMENT OF JUSTICE FILES COMPLAINT AND LODGES CONSENT DECREE IN CLEAN WATER ACT LAWSUIT AGAINST GREAT FALLS, MT, AND MALTEUROP NORTH AMERICA, INC:** On March 5, 2014, the Department of Justice filed a complaint and consent decree in a Clean Water Act (CWA) action against Malteurop North America, Inc., and the City of Great Falls, Montana. The complaint alleges that Malteurop has violated the EPA's pretreatment regulations by discharging pollutants that have caused toxic levels of hydrogen sulfide (H₂S) to form in the city's sewer system and that have caused manholes to corrode. The complaint also alleges that the city has failed to implement its pretreatment program adequately, had at least 33 sanitary sewer overflows, and bypassed sewage around part of its wastewater treatment plant due to excessive infiltration and inflow. Under the consent decree, Malteurop has agreed to meet specified in-sewer limits and to pay a civil penalty of \$525,000. The city has agreed to undertake measures to improve its pretreatment program, to install and maintain an H₂S monitoring system (to be funded by Malteurop), to line corroded manholes, to take precautions for worker safety, to implement a comprehensive capacity, management, operations, and maintenance program to prevent and limit sanitary sewer overflows, to pay

a cash penalty of \$120,000, and to expend \$125,000 on a supplemental environmental project to treat storm water.

Contact: Peggy Livingston, 312-6858

***REGION 8 SETTLES DRINKING WATER ACTION IN WYOMING WITH KENNINGTON SPRINGS PIPELINE, INC.:** On March 4, 2014, the Regional Judicial Officer for Region 8 entered a final order approving a consent agreement between the EPA and Kennington Springs Pipeline, Inc., owner of the Kennington Springs public water supply system in Lincoln County, WY. The final order and consent agreement resolved a Safe Drinking Water Act administrative penalty action filed on September 30, 2013, in which the EPA alleged that Kennington Springs had exceeded the maximum contaminant level (MCL) for total coliform bacteria, failed to submit a compliance plan to the EPA by the deadline required by a previously issued administrative order, failed to conduct required source water monitoring, and failed to provide related public notifications and reports to the EPA. Kennington Springs agreed to pay a penalty of \$2,000 for these violations. This is the second administrative penalty action against Kennington Springs for drinking water violations. In 2012, Kennington Springs agreed to pay a penalty of \$1,200 for violations alleged in a 2011 complaint. The EPA, rather than Wyoming, took these actions because Wyoming has not applied for primary authority to enforce the public water supply protection program.

Contact: Peggy Livingston, 312-6858

This Week --

***NPDES ENFORCEMENT AND DOJ SETTLE WITH IVORY HOMES FOR FAILING TO COMPLY WITH CONSTRUCTION STORMWATER REQUIREMENTS:** NPDES Enforcement, in conjunction with DOJ, plans to enter into a Consent Decree with Ivory Homes, Ltd. and Ivory Development, LLC (Ivory Homes) as a result of construction stormwater violations. Ivory Homes is agreeing to invest in a company-wide stormwater compliance program to improve employee training and increase management oversight at all current and future residential construction sites. Even though they only operate in Utah, Ivory Homes is one of the nation's 50 largest homebuilders and the largest in Utah. Included in the settlement is a civil penalty of \$250,000. This settles alleged violations that involve Ivory Homes' repeated failures to comply with permit requirements at its construction sites, including requirements to install and maintain adequate stormwater pollution controls, conduct required inspections, and prevent the discharge of construction materials.

Contacts: Stephanie Gieck (Technical), 312-6362 and Marc Weiner (Legal), 312-6913

***ECEJ'S OIL POLLUTION ACT (OPA) PROGRAM SENDS THE THREE AFFILIATED TRIBES OF THE MANDAN, HIDATSA AND ARIKARA NATION A TRIBAL CONSULTATION LETTER (NEW TOWN, ND):** Consistent with EPA's tribal policy, the Oil Pollution Act enforcement program has sent the chairman of the Three Affiliated Tribes of the Mandan, Hidatsa and Arikara Nation a letter notifying the Tribes that the EPA is considering issuing an administrative complaint to Gratech Company, Ltd. for alleged violations of section 311(j) of the Clean Water Act and the Spill Prevention Control and Countermeasure (SPCC) Regulations set forth in 40 C.F.R. Part 112, and seeking any other information that would aid the EPA in its efforts to address noncompliance at the facility. The letter also asks whether the Tribal government plans to address the non-compliance using tribal authorities. The company is not tribally owned or operated, and its offices are not located within the exterior boundaries of the Fort Berthold Reservation. However, the company

was operating a mobile facility on the reservation at the time of an EPA inspection, on June 22, 2011. The alleged violations include failure to prepare and implement an SPCC plan for its mobile facility. **Contacts: Cynthia Peterson (Technical), 312-6879 and Peggy Livingston (Legal), 312-6858**

OFFICE OF PARTNERSHIPS AND REGULATORY ASSISTANCE

***No items to report.**

MONTANA OPERATIONS OFFICE

***No items reported.**

ATTACHMENT
CONFIDENTIAL AND DELIBERATIVE--- INTERNAL AGENCY DOCUMENT

Wyoming GIS-Based Statewide Recreation UAA Update -- February, 2014

Issue: On January 28, 2014, WDEQ public noticed a revised use attainability analysis (UAA) and web map showing proposed recreation use designations, as well as a response to comments for the comment period ending September 30, 2013. The comment period closes March 14, 2014. Region 8 staff think the proposed use changes are approvable and are preparing a supportive comment letter. WDEQ will likely submit this version of the UAA to EPA for action after completing a response to comments document. EPA's action will set a national precedent.

Regulatory Context

- Recreation uses are considered attainable unless demonstrated otherwise through a UAA. (CWA Section 101(a)(2) and 303(c)(2)(A); 40 CFR § 131.10 (g) and (j)).
- Recreation uses have traditionally been divided into primary contact (protects people from illness due to activities involving the potential for ingestion of, or immersion in, water) and secondary contact (protective when immersion is unlikely). Changing the designated use from primary to secondary contact usually means a less stringent *E. coli* criterion, therefore a UAA is required. (40 CFR § 131.10(j))
- A use change must be based on one of the six factors listed in 40 CFR § 131.10(g). The regulation specifically allows use subcategories (such as secondary contact) if the state can demonstrate "natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use" (§ 131.10(g)(2)). Although 131.10(g) does not include a factor allowing physical features, location, public access, or public safety to be the sole basis for determining a recreation use is unattainable, the EPA has encouraged states to consider these variables because they can be important in determining whether a factor listed in 40 CFR § 131.10(g) is truly preventing the attainment of a recreation use.

Wyoming Background

- In 2001, Wyoming upgraded all state waters to primary contact recreation (*E. coli* criterion for primary contact is a geometric mean of 126 organisms per 100 milliliters).
- When environmental groups started collecting *E. coli* data and submitting it to WDEQ to try and get waters included on the 303(d) list, the Conservation Districts threatened to send WDEQ hundreds of UAAs to downgrade waters from primary to secondary contact recreation. The Conservation Districts are worried that if waters on public lands are listed and the TMDL determines that cows (nonpoint sources) are the problem, public land managers will rethink grazing leases.
- WDEQ's response was to revise their WQS to downgrade a large number of waters statewide from primary to secondary without UAAs, which we disapproved in September 2008. However, EPA also approved creation of a secondary contact use (geometric mean of 630 organisms per 100 milliliters) and a seasonal recreation use (all state waters are secondary contact during the winter months).
- To resolve the disapproval, WDEQ decided in Spring 2009 to develop a Geographic Information System (GIS)-based statewide UAA for recreation uses.

Wyoming's UAA Approach

- Traditionally, UAAs are based on site-specific field data. However, EPA guidance discusses the ability of states to conduct UAAs for groups of waters, sometimes called a categorical UAA, provided that the waters are sufficiently similar to make the results of the generic analyses reasonably applicable to each segment.
- Wyoming's UAA is limited to low flow waters (mean annual flow < 6 cfs).
- The UAA concludes that of Wyoming's 112,890 stream miles (1:100k NHD), 92,712 stream miles (82%) do not have sufficient flow to support primary contact recreation. However, using GIS data layers representing populated places, schools, and recreation areas, the state identified 6,997 stream miles that should be protected for primary contact recreation despite low flow, resulting in 76% of Wyoming's stream miles proposed for secondary contact recreation. No recreational use removals are proposed.
- Model results were validated with 871 field surveys focused on determining existing and potential recreation uses (no depth or flow data was collected). Where field surveys indicated primary contact was attainable, the model agreed 95% of the time.

Summary of EPA Communication with WDEQ

- WDEQ sent their first draft of the UAA to EPA in February 2012.
- EPA sent a comment letter to WDEQ on May 15, 2012, which focused on the model's lack of a strong connection to the 131.10(g) factors and large scope of waterbody types included.
- WDEQ sent their draft low flow protocol to EPA in October 2012, which attempted to address EPA's concerns by incorporating stream flow data to link the model to factor 2 and limiting the scope to low flow waterbodies (lakes, reservoirs and ponds excluded).
- EPA sent a comment letter to WDEQ on January 22, 2013, emphasizing concerns about pools or other features that support primary contact recreation that cannot be identified using current GIS-technology.
- WDEQ public noticed the draft UAA on August 26, 2013. EPA sent a comment letter on September 25, 2013, indicating that EPA's preliminary thinking is that WDEQ's draft approach for identifying streams with insufficient flow to support primary contact recreation use would be consistent with EPA's water quality standards regulation (40 CFR Part 131.10(g)(2)).

Summary of Public Comments

- WDEQ did not receive any comments indicating there are pools or other features on low flow streams that are used for primary contact recreation.
- Most of the comments were either supportive of WDEQ's approach, or indicated that the extension process and access datasets were designating too many low flow waters as primary contact recreation.
- Commenters included Conservation Districts, industry, Wyoming Department of Agriculture, Wyoming Farm Bureau Federation, and U.S. Forest Service.

- Environmental groups that have previously expressed opposition (Western Watersheds Project and Wyoming Outdoor Council) did not comment.

Changes to Draft UAA

- Deleted multiple weighted buffers (1.0 and 2.0 mile) around established recreation sites, trailheads, and dispersed campsites. Buffer distances that designate a low flow stream primary contact recreation were not changed.
- Added BLM recreation sites and deleted Wildlife Habitat Management Areas based on conversations with Wyoming Game and Fish Department and users
- Modified the extension process to only include isolated secondary segments and side channels of braided primary streams (deleted extension of primary segments upstream and downstream to nearest 100k NHD confluence, or lake, or terminus of stream)
- Incorporated USGS flow data and other site-specific flow data
- Added new field survey photos

Recommendation/Next Steps

- Draft supportive comment letter and vet with ORC, OGC, and SHPD
- Bert call to David Waterstreet to give kudos on state's responsiveness to our comments and the quality of the product